



COCHISE COUNTY

COMMUNITY DEVELOPMENT

"Public Programs...Personal Service"

MEMORANDUM

TO: Cochise County Board of Supervisors
Through: Michael J. Ortega, County Administrator

FROM: Peter Gardner, Planner I
For: Beverly Wilson, Planning Director

SUBJECT: Docket Z-14-03 (Phillips)

DATE: May 20, 2014, for the June 10, 2014 Meeting

APPLICATION FOR A REZONING

The Applicant seeks to rezone two adjacent five-acre parcels from RU-2 (Rural, one dwelling per two-acres) to RU-4 (Rural, one dwelling per four-acres) for the purpose of utilizing the County's Owner-Builder Opt-Out program to permit existing structures. The current RU-2 Zoning designation does not qualify for the program. The property (Parcels #404-02-265 & 404-02-268) is located on N. Tequila Sunrise Road in McNeal, AZ. The Applicant is Leah Phillips.

I. PLANNING AND ZONING COMMISSION

On Wednesday, May 14, 2014, the Planning and Zoning Commission voted 6-1 to forward this Docket to the Board of Supervisors with a recommendation of approval. The motion included the conditions of approval recommended by staff.

II. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES

Size:	10-acres
Zoning:	RU-2 (Rural, one dwelling per 2-acres)
Growth Area:	Category D (Rural Area)
Area Plan:	<i>None</i>
Comprehensive Plan Designation:	Rural
Existing Uses:	Single Family Residence
Proposed Uses:	Same

Surrounding Zoning

Relation to Subject Parcel	Zoning District	Use of Property
North	RU-2	Vacant Land
South	RU-2	Vacant Land
East	Non-Maintained Road/RU-2	N. Zuni Ave/Vacant Land

West	Non-Maintained Road/RU-2	N. Tequila Sunrise Rd/Vacant Land
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III. PARCEL HISTORY

There is a small home along with several accessory structures on the property, all of which the Applicant constructed without a permit.

When the Applicant discovered that permits were required for construction, she came forward proactively to rectify the situation. Staff has no further history on the parcel.



West view of the property, with the home in the background.

IV. NATURE OF REQUEST

The Applicant, Leah Phillips, has a home and accessory structure on her property, which were constructed without permits. Upon discovering that building permits were required, she approached Staff to correct the situation. As it is difficult to inspect existing structures for Building Code compliance, the Owner-Builder Opt Out program was presented as an option. The Applicant chose to use this program to legitimize the construction, though the property is not currently eligible under the current RU-2 zoning. To utilize the program a property must be zoned for a minimum lot size of four-acres or more, and must be a minimum of four-acres. While the property currently complies with the second provision, a downzoning to RU-4 is required to meet the first provision.

V. ANALYSIS OF IMPACTS

Mandatory Compliance

The subject property lies within a Category “D”—Rural Area and is considered a “Rural” land use designation area per the *Comprehensive Plan*. Section 402 of the County Zoning Regulations allows owners of property lying within this designation to request a rezoning to RU-4 (Rural, one home per four-acres), as this is the default zoning in the unincorporated areas of the County. Decreases in density such as this are encouraged in such Rural areas to protect open space and the County’s rural character.



Example of surrounding area, looking southeast.

Compliance with Rezoning Criteria

Section 2208.03 of the Zoning Regulations provides 15 criteria used to evaluate rezoning requests. Nine of the criteria are applicable to this request, which, as submitted, complies with each of the nine applicable factors.

1. Provides an Adequate Land Use/Concept Plan—Complies.

While the Applicant has not yet submitted a site plan, Staff’s review of aerial images and information from the Applicant is sufficient for the current proposal. A complete site plan will be required at permit submittal. Note that Section 2208.03.B.1 of the Zoning Regulations does not relate specifically to what is proposed. That is, the rezoning would not facilitate a new residential subdivision development and so would not require a new subdivision plat submittal.

2. Compliance with the Applicable Site Development Standards—Complies.

All existing structures comply with applicable site development standards.

3. Adjacent Districts Remain Capable of Development—Complies.

The proposal would not affect the development prospects of any neighboring property.

4. Limitation on Creation of Nonconforming Uses—Complies.

The proposal would not create any non-conforming land uses.

5. Compatibility with Existing Development—Complies.

There is no existing development, and the proposed downzoning further preserves open space in the area.

6. Rezoning to More Intense Districts—Not Applicable.

The request is to rezone to a less intensive district, therefore this factor does not apply.

7. Adequate Services and Infrastructure—Complies.

The site is located off grid, but has potential for all necessary utilities.

8. Traffic Circulation Criteria—Complies.

While the local roads are primitive, the request will not serve to increase potential usage of said roads.

9. Development Along Major Streets—Not Applicable.

The property does not border any major street.

10. Infill—Not Applicable.

This Factor applies only for rezoning requests to GB, LI or HI, and is therefore not applicable.

11. Unique Topographic Features—Not Applicable.

There are no exceptional topographic features warranting consideration on or near the site, nor is the request a rezoning to a more intensive district, therefore this factor is not applicable.

12. Water Conservation—Not Applicable.

As a proposal to reduce the permitted density on the parcel, this factor is not applicable.

13. Public Input—Complies.

As a request to rezone to a less intensive district, no Citizen Review was required. Staff posted the property and mailed letters to property owners within 1,500-feet of the site. To date Staff has received requests for clarification, and one negative response from a neighbor expressing concern about the value of their land.

14. Hazardous Materials – Not Applicable.

No hazardous materials are proposed as part of the development plan.

15. Compliance with Comprehensive Plan - Complies

A reduction in potential density from one dwelling per two-acres to one dwelling per four-acres, while maintaining the Rural designation is in harmony with the policies of the Comprehensive Plan.

VI. SUMMARY

This rezoning request pertains to two adjacent five-acre parcels in McNeal. The Applicant is requesting to downzone the parcels from RU-2 to RU-4 to facilitate using the Owner-Builder Opt Out program to legitimize structures constructed without a permit. The Applicant approached Staff to rectify the situation, and therefore no violation has been issued.

The requested zoning of RU-4 is in character with the five-acre lots and open, undeveloped nature of the area.

Staff's recommendation is based upon the above analysis, as well as the following Factors in Favor and Against approval:

Factors in Favor of Approval

1. Allowing the request would be in keeping with the character of the area which is undeveloped land; and
2. The *Comprehensive Plan* policies encourage reductions of density in undeveloped areas.

Factors Against Approval

1. The request comes as a result of a request to legitimize structures built without a permit; and
2. One neighboring property owner has expressed opposition based on uncertainty regarding property values.

VII. RECOMMENDATION

Based on the Factors in Favor of Approval, staff recommends that the Planning and Zoning Commission forward Docket Z-14-03 to the Board of Supervisors with a recommendation of **conditional approval**, subject to the following standard Conditions:

1. The Applicant shall provide the County with a signed Acceptance of Conditions and a Waiver of Claims form arising from ARS Section 12-1134 signed by the property owner of the subject property within thirty (30) days of Board of Supervisors approval of the rezoning; and
2. It is the Applicant's responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations.

Mdm. Chair, I recommend we Approve Docket Z-14-, subject to the Conditions recommended by staff.

VIII. ATTACHMENTS

- A. Rezoning Application
- B. Aerial Photograph
- C. Location Map
- D. Neighbor Response